



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 532

IN THE MATTER
OF
JAMES GIBNEY

DISPOSITION AGREEMENT

This Disposition Agreement ("Agreement") is entered into between the State Ethics Commission ("Commission") and James Gibney ("Gibney") pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On January 18, 1995, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Gibney. The Commission has concluded its inquiry and, on July 11, 1995, found reasonable cause to believe that Gibney violated G.L. c. 268A, §19.

The Commission and Gibney now agree to the following findings of fact and conclusions of law:

1. Gibney was the Fall River assistant superintendent of schools from 1989 to 1993. In January 1994, Gibney was appointed superintendent of schools by the Fall River School Committee ("School Committee"), after serving as the acting superintendent of schools for a number of months. As such, Gibney was a municipal employee, as that term is defined in G.L. c. 268A, §1, at all times here relevant.
2. As assistant superintendent, Gibney was responsible for maintaining the list of substitute teachers for the Fall River school system. According to Gibney, during the time he was responsible for the substitute list, every applicant who applied for a substitute teaching position was put on the substitute list, as long as he or she met the minimum education requirement of two years of college.
3. The Fall River school system uses an average of 50 to 60 substitutes daily. Substitutes replace teacher assistants^{1/} as well as teachers. At the times here relevant, Fall River substitute teachers were paid a minimum of \$44 per day. If a substitute replaced a teacher and remained in the same assignment for more than five days, the pay increased to \$58; if a substitute replaced a teacher assistant, the pay remained at \$44 per day, regardless of the number of days in the same assignment.^{2/}
4. In December 1990, Gibney's daughter, Christine Gibney ("Christine"), applied for a substitute teacher position. At the time, Christine was in her third year of college.
5. Gibney, as assistant superintendent, reviewed Christine's application, determined that Christine met the minimum educational requirements to be a substitute and instructed his secretary to place Christine's name on the substitute list.^{3/}
6. Between December 1990 and June 1992, when she graduated from college, Christine worked a total of 50 days as a substitute in the Fall River school system.^{4/}

7. In September 1992, a year-long substitute teacher assistant position became available at the Lincoln School in Fall River. The Lincoln School principal contacted Gibney and requested someone to fill the position. In response, Gibney gave the Lincoln School principal the names of three people (including Christine) from which to choose to fill the position.

8. The Lincoln School principal chose Christine and, in September 1992, Christine was assigned to fill the substitute teacher assistant position for the 1992-1993 school year. Christine received the same assignment for the 1993-1994 school year and thus worked two full 180-day school years in the same substitute teacher assistant position. Christine was paid \$44 per day for her substitute teacher assistant work at the Lincoln School.

9. At no time, prior to or contemporaneous with his above-described actions, did Gibney disclose to his appointing authority, the School Committee, that he was adding his daughter's name to the substitute list, that he was recommending her to fill a long-term substitute teacher assistant position, or that he was otherwise officially participating in his daughter's hiring as a substitute.^{5/}

10. Section 19 of G.L. c. 268A, except as otherwise permitted in that section,^{6/} provides, in relevant part, that a municipal employee is prohibited from participating as such an employee in a particular matter in which he knows a member of his immediate family^{7/} has a financial interest.

11. The adding of Christine's name to the substitute list and the offering of her name to the Lincoln School principal to fill a long-term substitute teacher assistant position were particular matters.^{8/} Both of these actions involved decisions or determinations by Gibney in his official capacity as assistant superintendent.

12. By, in his official capacity as assistant superintendent, deciding to add Christine's name to the substitute list and offering her name to the Lincoln School principal to fill a long-term teacher assistant position, Gibney participated^{9/} in these particular matters.

13. Christine had a financial interest, known to Gibney, in her employment as a substitute. Therefore, by participating officially in his daughter Christine's employment as a substitute teacher assistant in Fall River, as described above, Gibney participated as a municipal employee in particular matters in which to his knowledge a member of his immediate family had a financial interest. In so doing, Gibney violated G.L. c. 268A, §19.

14. Gibney fully cooperated with the Commission's investigation.^{10/}

In view of the foregoing violation of G.L. c. 268A by Gibney, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Gibney:

(1a that Gibney pay to the Commission the sum of one thousand dollars (\$1,000) as a civil penalty for violating G.L. c. 268A, §19; and

(2a that Gibney waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: August 9, 1995

^{1/} Teacher assistants are required to have a high school diploma or its equivalent. At the time here relevant, assistants were paid on an hourly basis, between \$6 and \$7 per hour for six hours, thus earning \$38 to \$42 daily.

^{2/} Thus, a substitute teacher replacing a teacher assistant was always paid more than the teacher assistant, during the period here relevant.

^{3/} Prior to Christine's name being placed on the substitute list, her educational credentials were verified by Gibney's secretary in the same manner as was done with all applicants being placed on the list.

^{4/} Christine's assignments, as with all substitute assignments, were made by Gibney's secretary in response to calls for substitutes from school principals. The Commission is aware of no evidence that Gibney interfered on Christine's behalf in these assignments.

^{5/} Gibney did not make a disclosure concerning his daughter working as a substitute in the Fall River school system until February 7, 1994. According to Gibney, he first became aware of an obligation under the Education Reform Act (which took effect on June 18, 1993) to formally notify the School Committee of his daughter's employment in January 1994, when it was pointed out to him during a public meeting at which he was interviewed for the position of superintendent. According to Gibney, however, it was common knowledge in the Fall River school system that Christine was his daughter. General knowledge of Christine's relationship to Gibney was not the equivalent, however, of Gibney's disclosure to his appointing authority of the actions he was taking as assistant superintendent concerning Christine. Furthermore, as set forth *infra*, advanced disclosure to one's appointing authority is required to avoid a violation of G.L. c. 268A, §19.

^{6/} Section 19(b)(1) permits a municipal employee to participate in a particular matter in which his immediate family member has a financial interest if the employee *first* advises his appointing authority of the nature and circumstances of the particular matter and makes full disclosure of the financial interest, and the employee receives *in advance* a written determination from the appointing authority that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee. Here, Gibney did not make such a disclosure to his appointing authority (the School Committee) and did not receive such a determination from the School Committee. Thus, §19(b)(1) is not applicable here.

^{7/} "Immediate family" means the employee and his spouse, and their parents, children, brothers and sisters. G.L. c. 268A, §1(e).

^{8/} "Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

^{9/} "Participate" means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).

^{10/} Gibney aided the Commission throughout its investigation into this matter by providing information and documents. In addition to agreeing to resolve his violations of §19 with this Agreement, Gibney has made a commitment to assisting others to avoid violating the law by offering to help provide inservice training concerning the conflict of interest law to other public school administrators.